No. 79-1356

In the Supreme Court of the United States

OCTOBER TERM, 1979

KATHY SUE JOHNSON, etc. et al., and DARCEL MILTON, etc. et al.,
Petitioners,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, et al.,
Respondents.

On Writ Of Certiorari To The United States Court of Appeals For The Seventh Circuit

JOINT APPENDIX

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Petition for certiorari filed
March 5, 1980
Petition for certiorari granted
July 2, 1980

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NOTE: The opinions of the District Court and Court of Appeals are reproduced in the Appendices to the Petition for Certiorari.

DOCKET ENTRIES

Johnson v. Board of Education

76 C 995

Date	Proceedings
3-15-76	Filed complaint and two copies.
3-15-76	Filed civil cover sheets.
3-15-76	Filed affidavit re Gen. rule 39(2).
3-15-76	Filed appearance of attorneys for plaintiffs (2).
3-17-76	Issued summons and two copies with two copies of complaint as to defendants Joseph Hannon and Board of Education, re, note of attorneys.
3-26-76	Filed summons returned served on Joseph P. Hannon and Board of Education 2 services.
4- 8-76	Filed appearance of defendants and that of their attorney Michael J. Murray.
4- 9-76	Filed plaintiffs' notice of filing interrogatories.
4- 9-76	Filed plaintiffs' interrogatories first set.
4- 9-76	Filed defendants' notice of motion with motion for extension of time in which to file answer.
4-12-76	Enter order dated April 9, 1976: Enter order. Defendants' motion for extension of time of 14 days in which to file answer, to and including April 26, 1976 granted. —Will, J.
	Mailed notices 4-12-76.
4-26-76	Filed defendants' answer.

4-29-76 Filed plaintiffs' notice of motion.

4-29-76 Filed plaintiffs' motion for temporary restraining order.

4-30-76 Enter order dated April 29, 1976: Enter order—Plaintiffs' motion for temporary restraining order is denied. —Will, J.

Mailed notices 4-30-76.

5-11-76 Filed defendants' answers to interrogatories.

5-21-76 Filed Plaintiffs' notice of filing interrogatories.

5-21-76 Filed Plaintiffs' interrogatories to defendants. (Second Set).

6- 7-76 Enter order dated June 3, 1976: Order cause set for preliminary pre-trial conference on June 16, 1976 at 9:30 a.m. pursuant to Judge Will's standing order re: pre-trial conferences, section I. —Will, J.

Mailed notices 6-3-76.

6-17-76 Enter order dated June 16, 1976: Preliminary pre-trial conference held. Order cause placed on the September 1976 status call. (September 20, 1976). —Will, J.

Mailed notices 6-17-76.

7-9-76 Filed defendants' answers to interrogatories, Second set.

7-21-76 Filed plaintiffs' motion to compel answers to interrogatories.

7-21-76 Filed affidavit under Local Rule 12 (d).

7-22-76 Filed plaintiffs' notice of motion.

7-23-76 Enter order dated 7-22-76; Defendants given 10 days to respond to plaintiffs' motion to compel answers to interrogatories, reply due 10 days thereafter. Cause continued before Hon. Judge Hubert Will for further scheduling to September 20, 1976 at 10:00 a.m. —PARSONS, J.

Mailed notices 7-23-76.

7-22-76 Filed plaintiffs' notice of motion.

7-22-76 Filed plaintiffs' motion for leave to add additional parties plaintiff.

7-23-76 Enter order dated 7-22-76; Plaintiffs' motion for leave to add additional parties plaintiffs' is entered and continued before Hon. Judge Hubert Will to September 20, 1976 at 10:00 a.m. —PARSONS, J.

Mailed notices 7-23-76.

7-29-76 Filed Notice of Filing.

7-29-76 Filed Plaintiffs' further Motion for leave to add additional parties plaintiff.

8-3-76 Filed Memorandum in opposition to plaintiffs' motion to compel answers to certain interrogatories; certificate of service.

8-16-76 Filed Notice of filing.

8-16-76 Filed defendants' reply memorandum in support of motion to compel answers to certain interrogatories.

8-17-76 Filed Notice of Filing; certificate of service.

8-17-76 Filed Plaintiff's Motion for preliminary injunction or in the alternative for summary judgment.

8-17-76 Filed Memorandum in support of motion.

8-17-76 Filed Exhibits & Affidavit in support of motion (1 vol.).

8-18-76 Filed Notice of Motion.

8-18-76 Filed Plaintiffs' Motion for expedited briefing schedule.

8-19-76 Enter order dated 8-18-76: Plaintiffs' motion for expedited briefing schedule, granted; defendants answer brief due to be filed by August 25, 1976; plaintiff's reply by August 30, 1976. —MARSHALL, J.

Mailed Notices 8-19-76.

8-27-76 Filed defendants' notice of motion with motion to extend time attached.

8-30-76 Enter order dated August 27, 1976: Leave to defendants to file their memorandum in opposition to plaintiffs' motion for preliminary injunction to and including August 30, 1976. —Marshall, J.

Mailed notices 8-30-76.

8-31-76 Filed Defendants' Memorandum in opposition to plaintiffs' motion for preliminary injunction or in the alternative for summary judgment.

9-1-76 Filed Notice of filing.

9-1-76 Filed Reply Memorandum in support of motion for preliminary injunction or in the alternative for summary judgment, by plaintiffs.

9-22-76 Enter order dated September 20, 1976: Order plaintiffs' motion for summary judgment is denied. Order plaintiffs' motion to compel answers to interrogatories is granted. Order defendants to answer interrogatories within 10 days. Order plaintiffs' further motion to add additional parties is granted. Order cause continued to October 6, 1976 at 10:00 a.m. for report on status. —Will, J.

Notices mailed 9-22-76.

9-30-76 Filed defendants' answers to certain interrogatories.

10-7-76 Enter order dated October 6, 1976: Order cause set for pretrial conference on November 3, 1976 at 4:30 p.m. —Will, J.

Notices mailed 10-7-76.

11-5-76 Enter order dated November 3, 1976: Pretrial conference held. Order cause set for December 6, 1976 at 10:00 a.m. for report on status. —Will, J.

Notices mailed 11-5-76.

11-8-76 Filed defendants' response to request for supplementation of responses.

12-8-76 Enter order dated December 6, 1976: Order cause placed on the January 1977 status call (January 3, 1977) —Will, J.

Notices mailed 12-8-76.

1-3-77 Filed plaintiffs' notice of motion.

1-3-77 Filed plaintiffs' motion for hearing on preliminary injunction; exhibits.

1-5-77 Enter order dated January 3, 1977: Plaintiffs' motion for preliminary injunction will be set for hearing within short date. —Will, J.

Notices mailed 1-5-77.

2-8-77 Filed plaintiffs' notice of motion.

2-8-77 Filed plaintiffs' motion to incorporate documents as part of the record.

2-10-77 Enter order dated February 8, 1977: Plaintiffs' motion to incorporate documents as part of the record is granted. Order cause set for final pretrial conference on March 23, 1977 at 4:30 p.m. —Will, J.

Notices mailed 2-10-77.

2-11-77 Enter order dated February 10, 1977: On court's own motion order final pretrial conference now set for March 23, 1977 is reset to March 24, 1977 at 4:30 p.m. —Will, J.

Notices mailed 2-11-77.

3-24-77 Filed defendants' motion to dismiss certain plaintiffs.

3-29-77 Enter order dated 3-24-77, Final pre-trial conference held. Order cause set for May 6, 1977 for entry of final pre-trial order. WILL, J.

Mailed notices 3-29-77

5-4-77 Filed defendants' notice.

5-4-77 Filed defendants' motion for extension of time for pre-trial order.

5-5-77 Enter order dated 5-4-77, On motion of defendants order cause reset from May 6, 1977 to May 20, 1977 for entry of final pre-trial order. WILL, J.

Mailed notices 5-5-77

5-23-77 Enter order dated 5-20-77, Final pre-trial order entered. (DRAFT) Order cause set for May 27, 1977 for report on status. WILL, J.

Mailed notices 5-23-77

6-1-77 Enter order dated 5-27-77, Order cause placed on the list of cases held for trial. WILL, J.

Mailed notices 6-1-77

6-29-77 Filed plaintiffs' statement of additional facts.

7-1-77 Enter order dated 6-29-77, First amendment to final pre-trial order entered. (DRAFT) Order cause taken under advisement. WILL, J.

Mailed notices 7-1-77

7-26-77 Enter order dated 7-26-77, On court's own motion order cause set for August 5, 1977 for report on status. WILL, J.

Mailed notices 7-26-77

8-9-77 Enter order dated 8-5-77, Order cause contd to Oct. 7, 1977 for report on status. WILL, J.

Mailed notices 8-9-77

8-23-77 Enter order dated 8-5-77, Order certain provisions will be implemented by defendants in connection with Board Report no. 77-212-16 (revised) relating to Voluntary transfer of students from Gage Park and Morgan High School attendance areas etc. (DRAFT) WILL, J.

Mailed notices 8-23-77

10-12-77 Enter order dated 10-7-77, Order cause contd to Oct. 14, 1977 for report on status. WILL, J.

Mailed notices 10-12-77

10-14-77 Filed plaintiffs' notice of motion.

10-14-77 Filed plaintiffs' petition for attorneys fees.

10-14-77 Filed affidavit of Shalom L. Kohn.

10-14-77 Filed affidavit of Thomas H. Morsch.

10-14-77 Filed plaintiffs' notice of motion.

10-14-77 Filed plaintiffs' motion for entry of permanent injunction.

10-17-77 Enter order dated 10-14-77, Plaintiffs' petition for attorneys' fees taken under advisement, memo in support to be filed within 10 days; defendants' answering memo to be filed within 10 days thereafter and plaintiffs' reply memo to be filed within 5 days thereafter. WILL, J.

Mailed notices 10-17-77

10-14-77 Filed plaintiffs' notice of motion.

10-14-77 Filed plaintiffs' motion to incorporate documents as part of the record.

10-17-77 Enter order dated 10-14-77, Pltfs' motion to incorporate documents as part of the record is taken under advisement. Enter order. WILL, J.

Mailed notices 10-17-77

10-25-77 Filed plaintiffs' notice of filing.

10-25-77 Filed Memorandum in support of plaintiffs' petition for attorneys fees.

11-3-77 Filed defendants' notice of filing.

11-3-77 Filed objections of the Board of Education of The City of Chicago to plaintiffs' motion for attorneys' fees.

11-10-77 Filed plaintiffs' notice of filing.

11-10-77 Filed reply memorandum in support of plaintiffs' petition for attorneys fees.

11-29-77 Enter order dated 11-28-77, Defendants' motion for entry of findings of fact and conclusions of law contd to Dec. 1, 1977 at 10:00 a.m. WILL, J.

Mailed notices 11-29-77

11-29-77 Enter order dated 11-28-77, Plaintiffs' motion for entry of findings of fact and conclusions of law contd to Dec. 1, 1977 at 10:00 a.m. WILL, J.

Mailed notices 11-29-77

12-2-77 Enter order dated 12-1-77, Plaintiffs' and defendants' motion for entry of findings of fact and conclusions of law contd to Dec. 23, 1977. WILL, J.

Mailed notices 12-2-77

12-29-77 Enter order dated 12-23-77, Order cause continued to January 13, 1978 for ruling on motion for fees. WILL, J.

Mailed notices 12-29-77

1-5-78 Enter order dated 12-30-77, Enter findings of fact and conclusions of law. (DRAFT) Enter judgment order. Defendants are permanently enjoined etc. Plaintiffs recover costs. (DRAFT) WILL, J.

Mailed notices 1-5-78 JS-6

1-23-78 Filed Plaintiffs' Notice of Motion.

1-23-78 Filed Plaintiffs' Motion for Entry of Orders.

1-25-78 Enter order dated 1-23-78: Enter order: Plaintiffs to recover from defendant, Board of Education of the City of Chicago, $908.31 as their costs and out-of-pocket expenses and $1,000.00 as a witness fee for their expert witness, Professor Karl E. Taeuber. Plaintiffs Petition for attorneys fees is otherwise denied. (DRAFT). Order certain documents previously submitted to the court in connection with this matter be incorporated as part of the Record (DRAFT) WILL, J.

Mld Notices 1-24-78

1-30-78 Filed plaintiffs'-appellants notice of appeal.

1-30-78 Mailed copy of notice of appeal to Michael J. Murray.

2-8-78 Filed plaintiffs'-appellants designation of transcripts.

1-23-78 Filed documents incorporated into record by order of Jan. 23, 1978. (1 manila folder) & Feb. 8, 1977.

2-8-78 Filed defendants' exhibits 1 thru 39. (1 manila folder of loose exhibits)

2-8-78 Filed plaintiffs' exhibits 1 thru 77. (1 brown filing folder of loose exhibits) (excluding 55 thru 60)

2-9-78 Filed plaintiffs'-appellants requests for inclusion into complete record.

Milton v. Board of Education

76 C 996

Date	Proceedings
3-15-76	Filed complaint and two copies. (JS-5)
3-15-76	Filed Civil Cover sheet.
3-15-76	Filed appearance of Thomas H. Morsch and Shalom L. Kohn as attorneys for Plaintiffs with two affidavits pursuant to General Rule 39.
3-15-76	Filed Memo re summons: Only serve defendants, Joseph Hannon and Board of Education of Chicago.
3-17-76	Issued summons and two copies with two copies of Complaint for service on Joseph Hannon and Board of Education of Chicago.
5-26-76	Filed summons returned served on Joseph P. Hannon and Board of Education. 2 services
4-8-76	Filed appearance of Board of Education and officers and Joseph P. Hannon.
4-9-76	Filed plaintiffs' notice of filing.
4-9-76	Filed plaintiffs' interrogatories First set.
4-9-76	Filed defendants' notice of motion and motion for extension of time in which to file answer.
4-12-76	Enter order dated 4-9-76; Enter order defendants' motion for extension of time of 14 days in which to file answer, to and including April 26, 1976 granted. WILL, J.
	Mailed notices 4-12-76
4-26-76	Filed defendants' answer to complaint.
5-11-76	Filed defendants' answers to interrogatories.

5-21-76 Filed plaintiffs' notice of filing.

5-21-76 Filed plaintiffs' interrogatories, second set.

6-7-76 Enter order dated June 3, 1976: Order cause set for preliminary pre-trial conference on June 16, 1976 at 9:30 a.m. pursuant to Judge Will's standing order re: pretrial conferences, section I. Will, J.

Notices mailed 6-7-76

6-7-76 Filed plaintiffs' notice of filing first request for production of documents.

6-7-76 Filed plaintiffs' first request for production of documents.

6-17-76 Enter order dated 6-16-76; Preliminary pre-trial conference held. Order cause placed on the September 1976 status call (Sept. 20, 1976) WILL, J.

Mailed notices 6-17-76

7-9-76 Filed defendants' answers to interrogatories, second set.

7-21-76 Filed affidavit under Local Rule 12(d) by Shalom L. Kohn.

7-21-76 Filed plaintiffs' motion to compel answers to interrogatories.

7-22-76 Filed plaintiffs notice of motion.

7-23-76 Enter order dated 7-22-76; Defendants given 10 day to respond to plaintiffs motion to compel answers to interrogatories; reply due 10 days thereafter. Cause continued before Hon. Judge Hubert Will for further scheduling to September 20, 1976 at 10:00 a.m.—PARSONS, J.

Mailed notices 7-23-76

8-5-76 Filed memorandum in opposition to plaintiffs' motion to compel answers to certain interrogatories.

8-16-76 Filed plaintiffs' notice of filing.

8-16-76 Filed plaintiffs' reply memorandum in support of motion to compel answers to certain interrogatories.

8-17-76 Filed plaintiffs' notice of filing.

8-17-76 Filed motion for preliminary injunction or in the alternative for summary judgment.

8-17-76 Filed memorandum in support of motion for preliminary injunction, etc.

8-17-76 Filed exhibits and affidavit in support of motion for preliminary injunction, etc.

8-18-76 Filed plaintiffs' notice of motion.

8-18-76 Filed plaintiffs' motion for expedited briefing schedule.

8-19-76 Enter order dated 8-18-76; Plaintiffs' motion for expedited briefing schedule granted; defendants' answer brief due to be filed by August 25, 1976; plaintiffs' reply due August 30, 1976.—MARSHALL, J.

Mailed notices 8-19-76

8-27-76 Filed defendants' notice of motion; Motion for extension of time and supporting affidavit.

8-30-76 Enter order dated 8-27-76; Leave to defendants to file their memorandum in opposition to plaintiffs' motion for preliminary injunction to and including August 30, 1976. MARSHALL, J.

Mailed notices 8-30-76

8-31-76 Filed defendants' memorandum in opposition to plaintiffs' motion for preliminary injunction or in the alternative for summary judgment.

9-1-76 Filed plaintiffs' notice of filing.

9-1-76 Filed plaintiffs' reply memorandum in support of motion for preliminary injunction or in the alternative for summary judgment.

9-23-76 Enter order dated 9-20-76; Order plaintiffs' motion for summary judgment is denied. Order plaintiffs' motion to compel answers to interrogatories is granted. Order defendants to answer interrogatories within 10 days. Order plaintiffs' further motion to add additional parties is granted. Order cause continued to October 6, 1976 at 10:00 a.m. for report on status.—WILL, J.

Mailed notices 9-23-76

9-30-76 Filed defendants' answers to certain interrogatories.

10-7-76 Enter order dated 10-6-76; Order cause set for pre-trial conference on November 3, 1976 at 4:30 p.m.—WILL, J.

Mailed notices 10-7-76

11-5-76 Enter order dated 11-3-76; Pretrial conference held. Order cause set for December 6, 1976 at 10:00 a.m. for report on status.—WILL, J.

Mailed notices 11-5-76

11-8-76 Filed defendants' response to request for supplementation of responses.

12-9-76 Enter order dated 12-6-76; Order cause placed on the January 1977 status call (January 3, 1977.)—WILL, J.

Mailed notices 12-9-76

1-3-77 Filed plaintiffs' notice of motion.

1-3-77 Filed plaintiffs' motion for hearing on preminary injunction.

1-5-77 Enter order dated 1-3-77; Plaintiffs' motion for preliminary injunction will be set for hearing within short date.—WILL, J.

Mailed notices 1-5-77

2-8-77 Filed plaintiffs' notice of motion.

2-8-77 Filed plaintiffs' motion to incorporate documents as part of the record.

2-10-77 Enter order dated 2-8-77: Plaintiffs' motion to incorporate documents as part of the record is granted. Order cause set for final pre-trial conference on March 23, 1977 at 4:30 P.M.—WILL, J.

Mailed notices 2-10-77

2-14-77 Enter order dated 2-10-77; On Court's own motion order final pretrial conference now set for March 23, 1977 is reset to March 24, 1977 at 4:30 p.m.—WILL, J.

Mailed notices 2-11-77

3-28-77 Enter order dated 3-24-77; Final pretrial conference held. Order cause set for May 6, 1977 for entry of final pretrial order.—WILL, J.

Mailed notices 3-28-77

5-4-77 Filed defendants' notice.

5-4-77 Filed defendants' motion for extension of time for pretrial order.

5-5-77 Enter order dated 5-4-77; On motion of defendants order cause reset from May 6, 1977 to May 20, 1977 for entry of final pretrial order. WILL, J.

Mailed notices 5-5-77

5-23-77 Enter order dated 5-20-77; Final pretrial order entered. (DRAFT) Order cause set for May 27, 1977 for report on status.—WILL, J.

Mailed notices 5-23-77

6-1-77 Enter order dated 5-27-77: Order cause placed on the list of cases held for trial.—Will, J.

Mailed notices 6-1-77

7-5-77 Enter order dated 6-29-77: First amendment to final pre-trial order entered. (DRAFT) Order cause taken under advisement.—Will, J.

Mailed notices 7-5-77

7-27-77 Enter order dated 7-26-77: On court's own motion order cause set for August 5, 1977 for report on status.—Will, J.

Mailed notices 7-27-77

8-9-77 Enter order dated 8-5-77: Order cause continued to October 7, 1977 for report on status.—Will, J.
Mailed notices 8-9-77

8-23-77 Enter order dated 8-5-77: Order certain provisions will be implemented by defendants in connection with Board Report No. 77-212-16 (Re-

vised), relating to "Voluntary Transfer of Students From Gage Park and Morgan High School Attendance Areas" etc. (DRAFT)—Will, J.

Mailed notices 8-23-77

10-12-77 Enter order dated 10-7-77: Order cause continued to October 14, 1977 for report on status.—Will, J.

Mailed notices 10-13-77

10-14-77 Filed notice of motion.

10-14-77 Filed plaintiffs' motion to incorporate documents as part of the record.

10-17-77 Enter order dated 10-14-77: Enter order. Plaintiff's motion to incorporate documents as part of the record is taken under advisement.—Will, J.

Mailed notices 10-17-77

10-14-77 Filed notice of motion.

10-14-77 Filed plaintiffs' motion for entry of permanent injunction.

10-14-77 Filed notice of motion.

10-14-77 Filed plaintiffs' petition for attorneys fees.

10-14-77 Filed affidavit of Shalom L. Kohn.

10-14-77 Filed affidavit of Thomas H. Morsch.

10-17-77 Enter order dated 10-14-77: Plaintiffs' petition for attorneys' fees taken under advisement, memo in support to be filed within 10 days; defendants' answering memo to be filed within 10 days thereafter and plaintiffs' reply memo to be filed within 5 days thereafter.—Will, J.

Mailed notices 10-17-77

10-25-77 Filed notice of filing.

10-25-77 Filed plaintiffs' memorandum in support of plaintiffs' petition for attorneys fees.

11-3-77 Filed objections of the Board of Education of the City of Chicago to plaintiffs' motion for attorneys' fees.

11-3-77 Filed notice of filing.

11-10-77 Filed notice of filing.

11-10-77 Filed plaintiffs' reply memorandum in support of plaintiffs' petition for attorneys fees.

11-30-77 Enter order dated 11-28-77: Plaintiffs' motion for entry of findings of fact and conclusions of law continued to Dec. 1, 1977 at 10:00 A.M.—Will, J.

Mailed notices 11-30-77

12-5-77 Enter order dated 12-1-77: Plaintiffs' and defendants' motion for entry of findings of fact and conclusions of law continued to December 23, 1977.—Will, J.

Mailed notices 12-5-77

12-30-77 Enter order dated December 23, 1977; Order cause continued to January 13, 1978 for ruling on motion for fees.—WILL, J.

Notices Mailed 12-30-77

1-6-78 Enter order dated 12-30-77: Enter findings of fact and conclusions of law. (DRAFT) Enter Judgment Order. Defendants are permanently enjoined etc. plaintiffs recover costs. (DRAFT) —Will, J.

Mailed notices 1-5-78

1-23-78 Filed notice of motion.

1-23-78 Filed plaintiffs' motion for entry of orders.

1-25-78 Enter order dated 1-23-78: Enter ordtr: Plaintiffs to recover from defendant Board of Education of the City of Chicago $908.31 as their costs and out-of-pocket expenses and $1,000.00 as a witness fee for their expert witness professor Karl E. Taeuber. Plaintiffs' petition for attorneys' fees is otherwise denied. (Draft) Order certain documents previously submitted to the court in connection with this matter be incorporated as part of the record. (Draft)—Will, J.

Mailed notices 1-25-78

1-30-78 Filed plaintiff-appellants' notice of appeal. $5.00 pd. (consolidated with 76 C 995)

1-30-78 Mailed copy of consolidated notice of appeal to attorneys of record.

Court of Appeals

(No. 78-1215)

1978

3/16 Filed O&3c appellants' motion to file supplemental record; affd., svc.

3/20 Entered order granting motion of appellees to file supplemental record; District Court of Northern District of Illinois, Eastern Div. is directed to prepare, certify and transmit the transcript of proceedings for 6/27/77 a supplement to the record on appeal. And the supplement shall be filed with the clerk by 3/24/78.

3/22 Filed O&3c of appellant's motion to extend time; svc.

3/23 Entered order that time for filing appellants' brief be extended only to and including 4/11/78. Counsel is directed to comply with the affidavit and specificity requirements of C.R. 8(a).

4/11 Filed 15c of appellants' brief; and 10c appendix; svc.

4/11 Filed O&3c of motion for leave to file brief Amicus Curiae of the Lawyers' Committee for Civil Rights Under Law, Instanter; 15c brief tendered; svc.

4/14 Entered order granting motion for leave to file brief amicus curiae of the Lawyers' Committee for Civil Rights Under Law Instanter. The clerk is directed to file instanter the tendered fifteen (15) copies of the Brief *Amicus Curiae* of the Lawyers' Committee.

4/19 Filed 25c brief Amicus Curiae of The Lawyers' Committee for Civil Rights Under Law,svc., per order.

5/11 Filed 15c of brief of appellees; svc.

1978

5/25 Filed 15c appellants' reply brief, svc.

8/10 The Court, sua sponte, requests that the appellants and the appellees, by 8/31/78, file simultaneous supplemental briefs, not exceeding 15 typewritten double-spaced pages addressing the applicability of *University of California Regents* v. *Bakke,* 46 U.S. L.W. 4896 (June 28, 1978) to the facts of this case.

8/31 Filed 15c of appellants' supplemental brief; svc.

8/31 Filed 15c of supplemental brief for appellees; svc.

9/22 Entered order setting appeal for oral argument on Mon. 10/30/78 10:30 a.m.

Oral argument limited to 30 min. per/side.

10/30 Heard and taken under advisement.

11/15 Filed O&3c of appellees' motion to update record. svc.

11/17 Filed O&3c of appellants' response in opposition to motion to update record; svc.

11/21 Entered order granting motion of 11/15/78. Copies of the information contained in the motion to update record are to be distributed to the panel of judges that heard the oral argument of this appeal on Mon. 10/30/78.

11/29 Filed O&3c of appellants' motion for leave to file response; response tendered previously filed; svc.

11/30 Filed O&3c response to plaintiffs' motion for leave to file response, svc. (Board of Education)

12/5 Entered order granting appellants' motion of 11/30/78. The clerk of this court is directed to file herein instanter the 4 tendered copies of the

1978

response to the plaintiffs' motion for leave to file response. Copies of that response are to be distributed to panel of judges that heard the oral argument of this appeal on 10/30/78. Further ordered that response in opposition to motion to update record construed as a motion for reconsideration, is Denied on the ground that the appellees have responded to the appellants' objections and have provided the additional information requested in that response in opposition.

12/12 Filed O&3c of appellants' motion for leave to file reply to response to plaintiffs' motion for leave to file response; O&3c reply tendered; svc.

12/13 Filed O&3c of appellants' reply to response to plaintiffs' motion for leave to file response; dist., svc.

12/13 Entered order Granting appellant's motion of 12/12/78. The Clerk of this court is directed to file instanter the four tendered copies of the Reply To Response to Plaintiffs Motion for Leave To File Response.

1979

7/20 Filed O&3c of plaintiffs-appellants' motion for injunction; svc.

7/23 Filed O&3c of defendants-appellees' response in opposition to motion for injunction; svc.

7/27 Entered order that the motion for an injunction is DENIED.

8/13 Filed an opinion by Judge Bauer.

8/13 Entered final judgment order, AFFIRMING, with costs.

1979

8/27 Filed 25c appellants petition for rehearing, en banc, dist. svc.

9/7 Sent letter to counsel for the appellee to file an answer to the appellants' petition for rehearing en banc to be filed by Mon., 9/17/79. 25 copies of that answer will be required.

9/17 Filed 25c of appellee's response in opposition to petition for rehearing and suggestions for rehearing en banc; dist., svc.

10/23 Filed O&18c of appellant's additional authority; dist. en banc; svc.

12/6 Entered order that the petition rehearing is DENIED.

12/27 MANDATE ISSUED AND RECORD RETURNED.

1980

3/10 Filed notice of filing petition for cert. on 3/24/80; Supreme Court No. 78-1293.

75-553-2 May 14, 1975

REPORT OF THE COMMITTEE ON AREA B

TO THE MEMBERS OF THE BOARD OF EDUCATION
OF THE CITY OF CHICAGO:

The Area B Committee held a meeting with representatives of the Gage Park Advisory Council, the Local School Council and the P.T.A. on Tuesday, May 13, 1975, in the Board Members' Conference Room, and, as a result of that meeting, recommends the following items to the Board of Education:

1. That the maximum total enrollment of both the main and branch buildings be held to 2800 students.

2. That the racial composition of the student body be 48% Black, 42% White, 8% Spanish and 2% Principal's option.

3. That both of the above items become effective September, 1975.

4. That any student living in the Gage Park Attendance Area who cannot be accommodated at Gage Park High School be permitted to attend any under-utilized facility in the City.

Respectfully submitted,

COMMITTEE ON AREA B

(Signed) (MRS.) CAREY B. PRESTON, Chairman
(Signed) (MR.) THOMAS J. NAYDER, Member
(Abstained) MS. CARMEN VELASQUEZ, Member

76-271-1 March 10, 1976

SPECIAL REPORT RE: MORGAN PARK HIGH SCHOOL

TO THE MEMBERS OF THE BOARD OF EDUCATION OF THE CITY OF CHICAGO:

On August 27, 1975, Board Report 75-1041-2 was approved. Recommendation #2 contained therein read as follows:

2. "Reassessing the entire situation, including racial ratio, by January, 1976 in order to make further recommendations before parent-interview days in 1975-76 so that the goals cited herein may be realized."

In discussing the above item with the Morgan Park High School Community Council and staff, the undersigned recommend the following:

1. Maintain the existing enrollment goals of Board Report 75-1041-2.
2. Limit the incoming 9th graders to 700 students—50% black and 50% non-black.
3. Any student living in the Morgan Park attendance area who cannot be accommodated at Morgan Park will be permitted to attend any under-utilized facility in the city and/or any special vocational or technical school for which the student qualifies, with bus fare being provided for these students.

Respectfully submitted,

(Signed) Margaret Wild,
(Signed) Edgar G. Epps
(Signed) Bernard S. Friedman

77-212-16 (REVISED) July 13, 1977

VOLUNTARY TRANSFER OF STUDENTS FROM GAGE PARK AND MORGAN PARK HIGH SCHOOL ATTENDANCE AREAS

RECOMMENDATION:

That students residing in the attendance areas for Gage Park and Morgan Park High Schools not selected by the lottery system to attend these high schools, be allowed to attend the "receiving" high schools indicated below.

Students seeking to transfer to one of the receiving schools must be accepted with the following being the only exception—no child presently placed or recommended by a child study report for placement in a mentally handicapped division or social adjustment division should participate.

Students who meet the criteria noted in the first paragraph of this Board Report also have the option of attending any other high school designated as a receiving school.

Once students are accepted by a receiving school, they are to be considered members of that school's regular student body and, therefore, are not unilaterally transferable.

Students who choose to take advantage of this program will be transported from a convenient point in their residential area to the receiving school and brought back at the end of the school day. Buses for transportation will be provided by the Chicago public schools.

The following schools are included in this program:

Receiving School	No. of students who may transfer from Gage Park High School Attendance Area	No. of students who may transfer from Morgan Park High School Attendance Area
Roosevelt	130	50
Taft	50	—
Von Steuben	92	50
Mather	100	50
Sullivan	100	50
Curie	50	50
Lane Technical	100	50
Schurz	150	40
Senn	200	—
Lake View	140	50
	150*	
Total:	1,262	390

The number of students identified for transfer to receiving schools will not increase the enrollments of receiving schools beyond 105 percent of their operating capacities based on membership figures as of December 23, 1976 and a 10-period day schedule.

*Spaces have been reserved for only 90% of the total number of students who may transfer from Gage Park and Morgan Park High Schools attendance areas for the reason that past experience has shown that not all eligible students will take advantage of the opportunity. If the number of students seeking voluntary transfers exceeds the 90% space allocation, a subsequent recommendation will be made so that no eligi-

ble student from the Gage Park or Morgan Park High School attendance area who wishes to apply will be excluded.

Metropolitan High School has been removed from the list because it has a city-wide open enrollment at the present time, and the addition of 150 students would change its status as an integrated school.

DESCRIPTION:

To accommodate students not selected by the lottery system to attend Gage Park and Morgan Park high schools and to stabilize these neighborhoods.

SUPPORTIVE DATA:

This voluntary transfer program is being recommended as a way of accommodating students who were not selected by the lottery system to attend Gage Park and Morgan Park high schools. Some 1,262 Gage Park and 390 Morgan Park students were not selected by the lottery system.

In order to encourage students to participate in this program, the Chicago public schools will bear the cost of student transportation.

The schools involved in this program affect all racial/ethnic groups; thus they provide an opportunity to enhance racial integration on a voluntary basis and increase neighborhood stability.

A program to stabilize Gage Park area by specifying enrollment ceilings and racial quotas was established in 1975. A similar program for Morgan Park area was established in 1976. These programs have proved to be successful as is indicated by the following membership trends:

GAGE PARK HIGH SCHOOL
(including Branch membership)

Year	Member-ship	%White	%Black	%Hispanic	%Other
1973	2,680	49.4	42.7	7.4	0.5
1974	2,817	43.4	48.3	8.0	0.3
1975	2,535	40.8	48.6	9.9	0.7
1976	2,229	41.9	46.3	11.3	0.5

MORGAN PARK HIGH SCHOOL
(including Branch membership)

Year	Member-ship	%White	%Black	%Hispanic	%Other
1973	3,221	42.8	55.8	0.9	0.5
1974	3,479	39.6	59.1	0.8	0.5
1975	3,423	36.9	62.3	0.7	0.1
1976	2,911	38.2	61.1	0.5	0.2

FINANCIAL:

It is estimated that transportation costs will range from $45 to $150 per vehicle, per day times 180 days, depending on whether a common carrier or a private contract carrier provides the services. In addition, approximately 33 school aides will be required at $625 per month times 10 months. Cost of transportation based on services of a common carrier is estimated at $267,300 if all 1,652 students opt to transfer.

Accounting classification: 0385-210-000-3741-5510.

Since the School Code prohibits the incurring of any liability unless an appropriation therefor has been previously made, the expenditures set forth above are deemed to be contingent liabilities only, subject to appropriation therefor in the 1977-78 fiscal year budget.

Respectfully submitted,

JOSEPH P. HANNON
General Superintendent of Schools

Noted:
ROBERT STICKLES
Controller

ALFRED L. RUDD
Director, Transportation Services

Prepared by:
THOMAS S. TERAJI
Director, Facilities Planning

Approved:

BESSIE LAWRENCE
Deputy Superintendent — Field Services

MANFORD BYRD, JR.
Deputy Superintendent — Instruction and Pupil Services

JAMES G. MOFFAT
Deputy Superintendent — Management Services

Transcript of Proceedings

before the Honorable HUBERT L. WILL, on August 5, 1977.

PRESENT:

MR. SHALOM L. KOHN
(Sidley & Austin
One First National Plaza
Chicago, Illinois)
on behalf of plaintiffs;

MR. MICHAEL J. MURRAY
(Board of Education
228 N. LaSalle Street
Chicago, Illinois)
on behalf of the defendants.

The Clerk: 76 C 995, Kathy Sue Johnson, et al., versus Board of Education, City of Chicago; 76 C 996, Darrell Milton, et al., versus Board of Education, City of Chicago, report on status.

Mr. Kohn: Shalom Kohn on behalf of the plaintiffs.

Mr. Murray: Michael Murray, for the Board of Education and General Superintendent.

The Court: I have both of your letters, and I guess the Board of Education is going ahead.

Mr. Murray: We are proceeding, yes, your Honor. The Board adopted its action on July 13, and they are proceeding to implement.

The Court: We continued the hearing to see what would happen.

Mr. Kohn: I don't think we have specifically.

Mr. Murray: No. Your Honor was—

The Court: Do the plaintiffs want the hearing reopened and take further evidence?

Mr. Kohn: Well, I think your Honor can rule on the record before him. I think the case should remain pending until subject to some order to see what happens in October, if your Honor is so disposed.

We make certain points about adequate publicity, possible additional alternatives, and even if your Honor is disposed to approve the thrust of the Board's plan, maybe between now and September—

The Court: What are you doing about publicity, because I think that is a reasonable comment.

Mr. Murray: Yes. One of the problems with publicity is, the Board is awaiting the outcome of this cause. How can we publicize something we don't know whether or not is legally acceptable?

The Court: I am not going to do anything with respect to this case. I am not going to dismiss the case. I am not going to enter an injunction. I am not going to do anything.

You are going ahead with this proposal, as I understand it.

Mr. Murray: Yes, your Honor.

The Court: You don't have to wait for me to publicize the proposal. I am not going to enjoin publicity. Maybe I ought to order publicity, but that gives a sort of imprimatur of approval, doesn't it?

Mr. Kohn: I suppose.

The Court: Let me say this.

No doubt in my mind this is progress. How it is going to work out, I want to see.

Mr. Kohn: At some point I suppose the Court will have to make some ruling on this complaint.

The Court: Sure, but if it turns out that it works out reasonably well and that the excluded blacks are going to integrated schools through the vehicle of buses which are being provided, I will probably enter an order saying it is okay.

But, if it turns out that they aren't going because they didn't know of the possibility, or there were some other hitches in the proceedings which in fact foreclosed them, or precluded them from going—now, the number three, designated places not filled from students from one school should be available to students from another school. That seems a sensible proposal.

You ought to coordinate these two things so anybody who wants to go, can go from whatever school he comes from.

Now, its enrollment is less than 105 percent of capacity.

I don't see anything wrong with that. One hundred five of capacity is not such an overloading that you ought to be shying away.

Mr. Kohn: That is the number they used.

The Court: That is your general standard, isn't it?

Mr. Murray: Yes.

The Court: Fair proceedings shall be designed to apportion available spaces among competing students.

I don't know what procedure will be used on that, but I assume you will have to make some decision because some schools will be more popular than others.

Mr. Murray: Yes, I would expect some first come first serve situation.

The Court: Talk to Mr. Morsch and Mr. Kohn about that. See how you come out.

Each receiving school should accept 105 percent of capacity.

Mr. Murray: That the Board of Education feels is educationally necessary.

The Court: I thought that was the general standard.

Mr. Kohn: No, they picked some numbers, and 105 was the maximum limitation on any of them, but some of the schools didn't quite go up to this 105 percent of capacity.

The Court: I see. Kenwood High School, which is only 26 percent white should be added to the list.

I don't think we should do that. I am not going to do that.

Mr. Murray: May I ask if the Court received a certified copy of the Board's action which it adopted?

The Court: Yes. I think this is the certified copy.

Mr. Murray: Yes.

The Court: All right, let us continue it to, what? By October we will know how it is going.

Mr. Kohn: I would think so.

The Court: Let us continue it to the October status, which is October 3.

Mr. Kohn: Would your Honor's minute order include a provision that the Board provide statistics by that date, if it can get them, as to where these kids went?

The Court: Yes. The school will be in operation three weeks then. Get us an order that encompasses all of this, because I agree with you with respect to these other things, and I take it Mr. Murray doesn't disagree.

Mr. Murray: I don't disagree with it, except I would say that even if the plan works perfectly, it will not give the plaintiffs the relief which they seek, and I can't see any good reason for continuing this litigation.

The Court: Mr. Murray, I may dismiss it as moot, or write an opinion as to why I think what has happened is compliance with the constitutional requirements, whatever it may turn out to be. But, I am talking about these things here, adequate provision for publicity, and so forth. I want those in an order today.

You add, Curie School up to 105 percent of capacity. Designated places should be available for students of both schools.

Mr. Murray: I have to object to that. We considered that. We have added, the plan adds 100 students to Curie High School. I think anybody who knows the city at all, and has any—

The Court: What does that make Curie as to capacity?

Mr. Murray: The addition of 100? Excuse me.

Mr. Kohn: As I recall, it would be in a range of about 92, based on last year's statistics. Ninety-two percent, something like that.

The Court: What is the total capacity of Curie?

Mr. Murray: The total capacity at 105 percent, would be 3,775.

The Court: And you are going to have how many there?

Mr. Murray: The membership at Curie on September 30, 1976, was 3,154. This plan would add an additional 100 students.

The Court: You will be at something less than 90 percent of capacity.

Mr. Murray: Yes. We believe that is educationally sound, and any more students added to Curie would be educationally disruptive of the whole program.

The Court: Why?

Mr. Murray: Because a large influx of minority students, that is Marquette Park—

The Court: I know where it is.

Mr. Murray: This is an area where the situation this summer is especially highly volatile.

In our best judgment no more than 100 students should be added to Curie.

Mr. Kohn: One of the things we have been saying in this case is that the choices generally were surrendered to the prejudices of the white students.

We haven't perhaps convinced you of that with respect to Morgan Park or Gage Park, but this evidence of the alternative schools is, I think, at least suggestive that the Board is proceeding under those assumptions.

Mr. Murray: That is hogwash, but even if we had a perfect plan which had no bugs in it, and I am not saying the plan is perfect now, that that wouldn't satisfy the plaintiffs.

The only thing they want to do is get back in their neighborhood schools.

The Court: Your real problem is merely satisfying me.

Mr. Murray: I understand that.

The Court: And leaving Curie at less than 90 percent of the capacity, which is one of the geographically proximate schools to Gage Park and Morgan Park, and sending students 15 miles to schools like Senn, or Roosevelt, or Von Steuben, or Mather, which I guess are even farther than Senn—you know, I understand it is Marquette Park, but I don't think the Board of Education or the federal court ought to be bowing to the prejudices of the people of Marquette Park.

Mr. Murray: We don't either. That is why we have added 100 students to Curie. But, after all—

The Court: What is the racial composition of Curie now?

Mr. Murray: 75-25.

The Court: Which is my recollection. I find it difficult to believe if you add 100, or 200 it is going to make that much difference to the attitude of the students or the school.

Mr. Murray: Your Honor, our first concern of the Board of Education is the academic program at Curie continue.

The Board has taken that into consideration and made a sound judgment, that only 100 students should be added.

The Court: I am not going to tell the Board of Education how many people they should send, but if it turns out they have not done a reasonable job in making available—well, let us see how it works out.

If a lot of these kids go to black schools that would have gone to Curie, I think you may be in trouble with me if you don't let them go to Curie. I will tell you in advance. I am looking for the way it actually works out.

It just seems to me that the Board of Education ought to be doing everything it can to make it work out.

Mr. Murray: I think we are. Let us see how it works out.

The Court: All right, I will see you October 7. We will then do what seems right under the circumstances at that time.

You are going to get me a draft order, but it is not going to include Curie at 105 percent.

Mr. Murray: Right.

The Court: The rest it is, and it is not going to include Kenwood.

Mr. Kohn: That's correct.

The Court: It is going to provide for statistics.

Mr. Kohn: That is right.

The Court: All right. We will see how it works out.

(Which were all the proceedings had in the above-entitled cause.)